Design Originals, Inc. a/k/a Original Designs, Inc. ***and*** **United Steelworkers of America, District 10, AFL–CIO–CLC.** Cases 4–CA–31926, 4–CA–32339, and 4–CA–32446

December 16, 2004

DECISION AND ORDER

BY MEMBERS LIEBMAN, SCHAUMBER, AND WALSH

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the consolidated complaint. Upon charges filed by the Union in Cases 4–CA–31926, 4–CA–32339, and 4–CA–32446 on February 24, 2003, August 5, 2003, and September 23, 2003, respectively, the General Counsel issued the consolidated complaint on November 25, 2003, against Design Originals, Inc. a/k/a Original Designs, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the Act. The Respondent failed to file an answer.

On January 15, 2004, the General Counsel filed a Motion for Default Judgment with the Board. On January 20, 2004, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was filed by December 9, 2003, all the allegations in the complaint could be considered admitted. Further, the undisputed allegations in the General Counsel's motion disclose that, at the Respondent's request, the Regional Director granted the Respondent an extension of time until January 9, 2004 to file an answer. Despite this extension, however, the Respondent failed to file an answer.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's motion for default judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Pennsylvania corporation with its principal place of business in Allentown, Pennsylvania (the Shop), has been engaged in the manufacture of custom upholstered furniture.

During the year preceding issuance of the consolidated complaint, the Respondent, in conducting its business operations described above, purchased and received at the Shop goods valued in excess of $50,000 directly from points outside the Commonwealth of Pennsylvania. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that United Steelworkers of America, District 10, AFL–CIO–CLC (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, James Ellis held the position of the Respondent's president, and has been a supervisor of the Respondent within the meaning of Section 2(11) of the Act and an agent of the Respondent within the meaning of Section 2(13) of the Act.

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All employees employed by Respondent at the Shop, excluding office employees, non-manufacturing personnel and supervisors as defined in the Act.

At all material times, the Union has been the designated exclusive collective-bargaining representative of the unit and has been recognized as the representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, including the last executed agreement, which was effective from March 1, 1999 through February 28, 2002.

At all material times since at least March 1, 1999, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

On or about February 27, 2002, the Respondent and the Union reached complete agreement on terms and conditions of employment of the employees in the unit to be incorporated in a new collective-bargaining agreement (the agreement), which had effective dates of March 1, 2002 through February 28, 2006.

Since in or about late December, 2002, the Union presented the Respondent with a written version of the agreement, containing the terms and conditions of employment of the unit employees, and since that date, the Union has requested that the Respondent execute the agreement.

Since on or about March 24, 2003, the Respondent has failed and refused to execute the Agreement.

The agreement contains, among other things, Article V —Check-off; Article 18—Grievance Procedure; Article 19—Arbitration Machinery; and Article 25—401(k) Plan Provision.

The subjects set forth above relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purpose of collective bargaining.

By the following acts and conduct, the Respondent, on the dates listed below, has failed to continue in effect all the terms and conditions of the agreement:

1. Since on or about August 22, 2002 until in or about February 2003, the Respondent failed to abide by Article V of the agreement by deducting dues money from the pay of its unit employees who have authorized such deduction, but failing and refusing to remit those monies to the Union.

2. Since in or about February 2003, the Respondent has failed to abide by Article V of the agreement by failing and refusing to deduct dues monies from the pay of its unit employees who have authorized such deduction and by failing and refusing to remit those monies to the Union.

3. Since on or about February 25, 2003, the Respondent has failed to abide by Articles 18 and 19 of the agreement by failing and refusing to process the grievance filed by the Union dated February 21, 2003, protesting the Respondent's failure to transmit dues and fees to the Union

4. Since on or about March 24, 2003, the Respondent has failed to abide by Article 25 of the agreement by failing and refusing to contribute 3 percent of gross wages of unit employees into a 401(k) plan and to implement the Article 25—401(k) Plan provision.

The Respondent engaged in the conduct described above without prior notice to the Union and without affording the Union an opportunity to bargain or give its consent with respect to this conduct.

On or about March 24, 2003, the Respondent withdrew its recognition of the Union as the exclusive collective-bargaining representative of the unit, during a time when the agreement was in effect.

CONCLUSION OF LAW

By failing and refusing to execute the 2002–2006 agreement; by failing to continue in effect the terms and conditions of employment of the agreement; and by withdrawing recognition of the Union, the Respondent has failed and refused to bargain collectively and in good faith with the exclusive collective-bargaining representative of its unit employees, in violation of Section 8(a)(1) and (5) of the Act. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(1) and (5) of the Act by refusing, since March 24, 2003, to execute the 2002–2006 collective-bargaining agreement with the Union, we shall order the Respondent to execute the agreement and give retroactive effect to its terms. We shall also order the Respondent to make the unit employees whole for any loss of earnings and other benefits they may have suffered as a result of the Respondent's refusal to execute the agreement, in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

In addition, having found that the Respondent violated Section 8(a)(5) and (1) by withdrawing recognition from the Union and by failing and refusing to continue in effect all the terms of conditions of the collective-bargaining agreement, we shall order the Respondent to recognize and bargain with the Union, and to (1) deduct and remit union dues pursuant to valid checkoff authorizations that have not been deducted and/or remitted since August 22, 2002, with interest as prescribed in *New Horizons for the Retarded*, supra; (2) process the grievance dated February 21, 2003 filed by the Union regarding the Respondent's failure to transmit dues and fees to the Union, pursuant to Articles 18 and 19 of the agreement; and (3) implement the 401(k) plan provision of Article 25 of the agreement, make the contractually-required contributions to a 401(k) plan of 3 percent of gross wages of unit employees that have not been made since March 24, 2003, as well as any additional amounts due the plan in accordance with *Merryweather Optical Co.,* 240 NLRB 1213, 1216, fn. 6 (1979), and make whole the unit employees for any loss of interest they may have suffered as a result of the failure to make such payments.

ORDER

The National Labor Relations Board orders that the Respondent, Design Originals, Inc. a/k/a Original Designs, Inc., Allentown, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Withdrawing recognition from United Steelworkers of America, District 10, AFL–CIO–CLC, as the exclu-

sive collective-bargaining representative of the employees in the following appropriate unit:

> All employees employed by Respondent at the Shop, excluding office employees, non-manufacturing personnel and supervisors as defined in the Act.

(b) Failing and refusing to execute a written contract containing the complete agreement reached with the Union on about February 27, 2002, regarding the terms and conditions of employment of unit employees.

(c) Failing to continue in effect all the terms of the Respondent's March 1, 2002—February 28, 2006 collective-bargaining agreement with the Union by failing to (i) deduct union dues from employees' pay and/or remit the dues to the Union, pursuant to employee authorizations; (ii) process grievances filed pursuant to Articles 18 and 19 of the agreement; and (iii) implement the 401(k) plan provision of Article 25 of the agreement, and contribute 3 percent of gross wages of unit employees into a 40l(k) plan.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Recognize and bargain in good faith with the Union as the exclusive representative of the unit employees.

(b) Execute a written contract containing the agreement reached by the Respondent and the Union on February 27, 2002, setting forth terms and conditions of employment of the unit employees, give retroactive effect to the agreement, and make unit employees whole for any loss of earnings and other benefits they may have suffered as a result of the Respondent's failure to execute the agreement, with interest as set forth in the remedy section of this Decision.

(c) Deduct union dues from the pay of employees who have authorized such deductions, and remit to the Union all dues that have not been deducted and remitted since August 22, 2002, with interest as set forth in the remedy section of this Decision.

(d) Process the grievance dated February 21, 2003, filed by the Union regarding the Respondent's failure to transmit dues and fees to the Union, pursuant to Articles 18 and 19 of the collective-bargaining agreement.

(e) Implement the 401(k) plan provision of Article 25 of the collective-bargaining agreement, make the contractually required contributions to a 401(k) plan of 3 percent of gross wages of unit employees that have not been made since March 24, 2003, as well as any additional amounts due the plan, and make the unit employees whole for any loss of interest they may have suffered as a result of the unilateral failure to remit such payments, in the manner set forth in the remedy section of this decision.

(f) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(g) Within 14 days after service by the Region, post at its facility in Allentown, Pennsylvania, copies of the attached notice marked "Appendix."[1] Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 22, 2002.

(h) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist any union

[1] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT withdraw recognition from United Steelworkers of America, District 10, AFL–CIO–CLC, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All employees employed by us at the Shop, excluding office employees, non-manufacturing personnel and supervisors as defined in the Act.

WE WILL NOT fail and refuse to execute a written contract containing the complete agreement reached with the Union on about February 27, 2002, regarding the terms and conditions of employment of unit employees.

WE WILL NOT fail to continue in effect all the terms of our March 1, 2002—February 28, 2006 collective-bargaining agreement with the Union by failing to (i) deduct union dues from employees' pay and remit the dues to the Union, pursuant to employee authorizations; (ii) process grievances filed pursuant to Articles 18 and 19 of the agreement; and (iii) implement the 401(k) plan provision of Article 25 of the agreement, and contribute 3 percent of gross wages of unit employees into a 401(k) plan.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL recognize and bargain in good faith with the Union as the exclusive representative of the unit employees.

WE WILL execute a written contract containing the agreement reached by us and the Union on February 27, 2002, setting forth terms and conditions of employment of the unit employees, give retroactive effect to the agreement, and make unit employees whole for any loss of earnings and other benefits they may have suffered as a result of our failure to execute the agreement, with interest.

WE WILL deduct union dues from the pay of employees who have authorized such deductions, and remit to the Union all dues that have not been deducted and remitted since August 22, 2002, with interest.

WE WILL process the grievance dated February 21, 2003, filed by the Union regarding our failure to transmit dues and fees to the Union, pursuant to Articles 18 and 19 of the collective-bargaining agreement.

WE WILL implement the 401(k) plan provision of Article 25 of the collective-bargaining agreement, and make the contractually required contributions to a 401(k) plan of 3 percent of gross wages of unit employees, that have not been made since March 24, 2003, and make the unit employees whole for any loss of interest they may have suffered as a result of our unilateral failure to make such contributions.

DESIGN ORIGINALS, INC. A/K/A ORIGINAL DESIGNS